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September 12, 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20036


Re: CC Docket No. 94-54
RM-8012
Comments of the American Mobile
Telecommunications Association, Inc.

Dear Mr. Caton:

On behalf of the American Mobile Telecommunications Association, Inc., enclosed herewith please find its Comments in the above-referenced proceeding.

Kindly refer any questions or correspondence to the undersigned.

Very truly yours,


Elizabeth R. Sachs

ERS:cls

Enclosure

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SEP 12 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Equal Access and Interconnection)
Obligations Pertaining to)
Commercial Mobile Radio Services)

CC Docket No. 94-54
RM-8012


To: The Commission

**COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

Respectfully submitted,

**AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.**

By:



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September 12, 1994

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SUMMARY

The American Mobile Telecommunications Association, Inc. supports the Commission's tentative conclusion that the equal access requirements to which certain LECs are subject should not be imposed on CMRS providers. The highly competitive nature of this developing marketplace makes equal access obligations unnecessary, and the costs associated with providing that level of access could work to reduce, rather than enhance, competition.

The Association recommends that the Commission not extend that requirement across-the-board to the CMRS industry. However, if the Commission determines that this requirement should be applicable to other CMRS providers, AMTA urges that "traditional" SMR systems be exempted entirely and that the rules governing ESMR systems be narrowly tailored and implemented on a phased-in basis. The Association specifically suggests that any such requirement be delayed until after the implementation of expanded access codes.

AMTA suggests that the current system of good faith negotiation of interconnect arrangements should be continued, but that the FCC should retain oversight of the area and, if necessary, act as an ombudsman to ensure equitable treatment by requiring the filing of executed contracts.

AMTA submits that any consideration of CMRS-to-CMRS interconnection obligations is premature given the relatively nascent stage of industry development. It also concludes that the likely level of CMRS competition makes unnecessary any mandatory resale obligations.

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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF THE SECRETARY

In the Matter of)
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Equal Access and Interconnection) CC Docket No. 94-54
Obligations Pertaining to) RM-8012
Commercial Mobile Radio Services)

To: The Commission

**COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

The American Mobile Telecommunications Association, Inc. ("AMTA" or the "Association"), pursuant to Section 1.415 of the Federal Communications Commission's ("FCC" or the "Commission") Rules (47 C.F.R. § 1.415) respectfully submits its Comments in the above-captioned proceeding.^{1/} AMTA supports the Commission's tentative conclusion that the equal access requirements to which wireline local exchange carriers ("LECs") are subject should not be imposed on commercial mobile radio service ("CMRS") providers. AMTA submits that this highly competitive marketplace should be allowed to determine where equal access is necessary. In its Comments, the Association also responds briefly to the Commission's Notice of Inquiry on future interconnection issues.

I. INTRODUCTION

AMTA is a nationwide non-profit trade association dedicated to the interests of

^{1/} Notice of Proposed Rule Making and Notice of Inquiry, CC Docket No. 94-54 (adopted June 9, 1994 and released July 1, 1994) ("NPRM", "NOI" or "Notice").

what heretofore had been classified as the private carrier industry. The Association's members include trunked and conventional 800 MHz and 900 MHz SMR operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz band. These members provide commercial wireless services throughout the country, and represent the substantial majority of those private carriers whose systems have been reclassified as CMRS.

AMTA's members, from large to small, provide various levels of interconnected two-way communications services to customers in urban, suburban and rural areas. The Notice examines whether equal access requirements should be imposed on these entities, as well as the future direction of interconnection among CMRS providers and the public switched telephone network ("PSTN"). The Commission's proposals would have a significant impact on all AMTA members reclassified as CMRS providers; therefore, the Association has a profound interest in the outcome of this proceeding.

II. BACKGROUND

The issues contained in the Notice were reserved for later consideration in the Commission's Second Report and Order in the CMRS proceeding,^{2/} and were addressed in an MCI Telecommunications Corporation (MCI) petition for rule making.^{3/} In the

^{2/} Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, GN Docket No. 93-252, 9 FCC Rcd 1411 (1994) ("2nd R&O").

^{3/} MCI, Policies and Rules Pertaining to Equal Access Obligations of Cellular Licensees, Petition for Rule Making, filed June 2, 1992 ("MCI Petition").

2nd R&O, the FCC responded to the Congressional directive to reclassify land mobile systems based on a CMRS versus Private Mobile Radio Service ("PMRS") basis, rather than the previous private versus common carrier delineation. The Commission determined that all licensees offering for-profit, interconnected service to the public would be reclassified as CMRS and regulated as common carriers, either immediately or following a three-year statutory transition period ending August 10, 1996.^{4/} In addition, those CMRS providers offering "substantially similar" services are to be subject to comparable technical and operating regulations.^{5/}

Left unresolved in the 2nd R&O was the issue of "equal access"; i.e., the obligation to provide customers similar access to any long-distance service provider (interexchange carrier, or "IC") of their choice. The Commission now addresses three issues in the Notice: 1) whether to impose equal access obligations upon CMRS providers; 2) consideration of rules to govern interconnection requirements between wireline local exchange carriers (LECs) and CMRS providers; and 3) inquiry into whether to propose rules concerning CMRS-to-CMRS interconnection (the "NOI").

The FCC has tentatively concluded that imposition of equal access obligations should be broadened from those wireline cellular licensees affiliated with Regional Bell Operating Companies ("RBOCs") to all cellular licensees. NPRM ¶ 35. Given its conclusion in the CMRS proceeding that wide-area SMR, or "ESMR", service is

^{4/} AMTA disagrees with the wide scope of the FCC's CMRS definition, and has urged that the Commission adopt a narrower interpretation. See AMTA Petition for Reconsideration, GN Docket 93-252, filed May 19, 1994.

^{5/} FCC News Release, Report No. DC-2638, August 9, 1994.

substantially similar to cellular, the FCC also indicates that, should it impose equal access obligations on all cellular operators, such obligations necessarily may be extended to ESMR to ensure comparable regulatory treatment. NPRM ¶ 45. The Commission also concludes that CMRS providers should not be subject to the full range of equal access requirements now imposed on LECs (NPRM ¶ 3), and that any equal access requirements imposed on CMRS providers should be phased in. NPRM ¶ 54. The NPRM requests comment on a range of issues regarding implementation of equal access.

Concerning interconnection with LECs, the Commission questions whether to maintain the current "good faith negotiation" standard for interconnection agreements or require LECs to file tariffs for their interconnection charges. NPRM ¶ 113. In the NOI, the Commission asks whether it should propose rules governing CMRS-to-CMRS interconnection, seeking comment on how to foster economic growth and widespread access to the PSTN, and on potential financial and technological issues raised by such interconnection. NPRM ¶ 122. The NOI asks whether the CMRS marketplace may provide effective regulation of interconnection arrangements, and whether the Commission's inquiry into non-wireline interconnection is premature. NPRM ¶ 125. Finally, the Commission explores resale obligations for CMRS providers. NPRM ¶ 123.

III. EQUAL ACCESS

A. CMRS Providers Should Not be Subject to Equal Access Obligations.

AMTA agrees with the Commission's tentative conclusion that CMRS providers should not be subject to the full panoply of equal access requirements now imposed on

LECs. Id. ¶ 3. However, the Association's position goes further: it respectfully submits that the wireless service environment makes any mandatory equal access requirement unnecessary.

The current equal access requirements arose from concerns about LEC treatment of ICs. Specifically, the obligations were intended to ensure that RBOCs were prevented from providing an unfair advantage to AT&T in connecting customers with long-distance service. See NPRM ¶ 6. Those LECs must offer access to all ICs that is "equal in type, quality, and price"^{6/} since they are the ICs' only source of access to the wireline local exchange network.

When the focus shifts to wireless mobile services, the picture is far different. ICs already receive mobile interLATA traffic (voice or non-voice) from a wide and increasing variety of interconnected service providers: cellular licensees, traditional and wide-area SMR operators, 220 MHz land mobile licensees, paging systems, wireless data transmission services and others. PCS systems offering a broad variety of services will soon be added to that menu of alternatives. The wireless marketplace, diverse and competitive, simply does not present the "bottleneck" of access that can lead to anticompetitive behavior.^{7/}

1. The CMRS marketplace should be allowed to provide needed services, including IC access.

AMTA disagrees with the Commission's proposal that equal access obligations

^{6/} United States v. AT&T, 552 F.Supp. 131, 227 (D.D.C. 1982), aff'd sub nom Maryland v. U.S., 460 U.S. 1001 (1983).

^{7/} AMTA therefore agrees with CTIA's position on this issue. See NPRM ¶ 24.

be extended to all cellular carriers. NPRM ¶ 35. Although the Commission must, of course, conform its rules to the judicial obligations imposed on those CMRS carriers governed by the Modified Final Judgment, the Association recommends that the agency impose equal access requirements only when clearly necessary to prevent abuses of bottleneck control.

The NPRM cites four expected benefits from expanding equal access obligations to all cellular licensees: 1) increased consumer choice and lower long distance costs; 2) increased end user access to networks; 3) the development of IC service offerings combining wireline and wireless services; and 4) promotion of regulatory parity. NPRM ¶¶ 36-39. In AMTA's opinion, these benefits will be achieved more efficiently in the marketplace without mandating equal access obligations because of its broad variety of competitive service providers.

2. Cellular market power does not mandate equal access requirements.

AMTA concurs fully with the Commission's argument that market power is an important factor in determining whether the public interest will be served by the imposition of equal access obligations. NPRM ¶ 32. AMTA and its members have noted repeatedly that cellular is the dominant wireless service, and have agreed with the Commission that other CMRS providers lack market power.^{8/} However, the Commission has previously concluded that ESMR and cellular services are substantially

^{8/} As AMTA has noted in past comments, ESMR service is in its infancy with limited service areas and a few thousand customers. All SMR licensees now serve a total of approximately 1.5 million customers with primarily dispatch communications, as compared with cellular's recently-announced total of 19 million customers.

similar.^{9/} In addition, it has concluded that "virtually all CMRS services are actually or potentially competitive with each other to some degree, and that the range of services that deemed substantially similar for purposes of establishing comparable technical requirements should therefore be defined broadly."^{10/}

Thus, AMTA is concerned that, should the Commission decide to impose equal access requirements on all of cellular, the agency may feel that regulatory symmetry requires application of those same obligations even where they are not warranted because there is no market power. As described infra, this decision would have a severe, adverse impact on many providers, without any concomitant public interest benefit.

B. Traditional SMR Operators Should be Exempt from Any Equal Access Obligation.

Should the FCC determine, in spite of the above discussion, that mandatory equal access obligations are necessary, AMTA strongly urges the Commission to exempt traditional SMR services from any such requirement.^{11/} Imposition of any sort of equal access requirement would have a devastating effect on these small operators, resulting in the diminution of competition in interconnected services.

As the Commission notes, there are costs to imposing equal access obligations, including modification of switching software or replacement of switches, upgrading of

^{9/} See GN Docket No. 93-252, Further Notice of Proposed Rule Making (adopted April 20, 1994 and released May 20, 1994), ¶ 15.

^{10/} GN Docket No. 93-252, News Release on Third Report and Order (August 9, 1994), at 1.

^{11/} For this purpose, AMTA includes reclassified commercial service providers at 220 MHz, 800 MHz and 900 MHz in its definition of "traditional SMR operators."

interconnection, and consumer education and administrative costs. NPRM ¶ 40. However, those problems are not exhaustive and do not address the functional inability of certain systems to meet the proposed requirements.

Most traditional, analog SMR operations employ "low-tech" interconnection equipment developed in the early 1980s. This equipment is essentially passive, merely recognizing the digits dialed and using a Type 1, PBX-type interconnection. Some systems do not have Direct Inward Dialing (DID) capabilities. Consequently, this equipment is unable to provide equal access of any type. Interconnect devices capable of providing the level of access contemplated in the Notice and compatible with traditional analog SMR equipment are not being developed since manufacturers' emphasis has shifted to newer technologies. If equal access requirements are imposed on all CMRS services, this segment of the industry will be forced to discontinue its provision of this option entirely.

The loss of this service option would be detrimental to traditional SMR customers in many areas and to the CMRS marketplace as a whole. Customers would lose the convenience of interconnected service provided in conjunction with their dispatch communications, while the industry generally would be deprived of the competition offered by traditional interconnected commercial systems. In rural areas where no cellular service is yet available, this might eliminate the only existing interconnected, two-way wireless offering. The public would clearly lose, not gain, choices should this be the result.

The current limited interconnect capability of these traditional systems has not

been an impediment in the growth of this industry segment. The vast majority of system operators provide interconnection only incidentally, as an adjunct to their primary dispatch service and a convenience to a small percentage of their customers.^{12/} Based on AMTA's research, many SMR licensees have operated their businesses for more than ten years without ever hearing a request for an alternate IC, and without the filing of a complaint with the FCC by either a customer dissatisfied with the IC choices available, or an IC eager to access that marketplace.

AMTA submits that the imposition of equal access obligations on traditional SMR service is both inconsistent with technical reality and contrary to the public interest. Therefore, the Association urges the Commission to exempt this segment of the marketplace from any mandatory equal access requirements imposed on CMRS providers.

C. Equal Access Obligations Imposed on ESMR Operators Should be Narrowly Tailored and Phased In.

AMTA further respectfully submits that should any mandatory equal access obligations be imposed on ESMR operators, such obligations must be narrowly tailored and must not be made applicable immediately. Narrow tailoring of equal access is necessary to allow ESMR to develop as a fully competitive CMRS service. Delay of equal access implementation is necessary because the Motorola Integrated Radio System (MIRS) technology expected to be used by the ESMR industry is not yet capable of

^{12/} The NPRM requests studies on interstate call traffic. Such information is not available from the SMR industry at this time. Traditional SMRs can garner such information only by combing through LEC bills; ESMR service is not yet provided on an interstate basis.

providing equal access.

1. The equipment currently available to ESMR operators cannot provide equal access.

The switching platforms for interconnection of ESMRs using Motorola's MIRS technology is produced by Northern Telecom. Switches now available were developed using the European CCITT standard (GSM). They are not capable of providing 1+ access to a preferred IC. Northern Telecom estimates that such capability will not be available until late 1995, at the earliest. Once new switches have been designed and installed at substantial additional cost, automatic routing to a single preferred IC will be possible.^{13/} This will be a home-area choice; there is no equal access capability under development for roaming MIRS customers. AMTA therefore requests, at a minimum, that any equal access obligation imposed on ESMR be delayed until necessary equipment can be put into place.

2. Costs of complying with equal access requirements will affect ESMR ability to offer competitive service.

The Commission's premise that the overall costs of implementing equal access-capable equipment are less for a developing industry, such as ESMR, since some parts of an operator's system can be put into service with new equipment from the beginning, whether or not accurate, obscures the enormous direct and indirect costs associated with offering that capability. Regardless of whether new switching equipment and software replaces old or is implemented at the outset, the equipment required to satisfy the

^{13/} System engineers estimate that 2-3 ESMR switches will be necessary to provide interconnected service to customers in each average metropolitan area.

contemplated obligations, on an absolute basis, costs substantially more. Moreover, ESMR operators have already incurred significant planning costs over the past several years to begin deployment of their systems. Equal access obligations would mean additional expenditures for redesigning their systems. Further, there are recurring administrative costs. Should the level of equal access obligations imposed on all CMRS providers extend to pre-subscription requirements, costs amounting to an estimated \$10 per existing user would be incurred. Customers will be severely impacted as these costs are passed on, particularly for those CMRS providers, such as ESMR, which have far fewer subscribers over which to distribute these added expenses. Due to the very substantial economic impact of meeting these requirements, with no obvious countervailing benefits to customers, AMTA requests that any equal access obligations placed on ESMR, or CMRS as a whole, be the minimum required to meet Commission goals.

D. Any CMRS Equal Access Requirement Should be Delayed Until After the Implementation of Expanded Access Codes.

AMTA notes that the Commission is implementing changes to the North American Numbering Plan ("NANP") that would have a major impact on equal access obligations.^{14/} In its NPRM on this issue, the FCC sought comment on the suggested expansion of Feature Group D (FGD) Carrier Identification Codes (CICs) from three to four digits. Id. ¶ 45. FGD access allows "1+" calls to be routed to a customer's facilities; callers can reach long distance carriers through use of CICs. The

^{14/} See Administration of the North American Numbering Plan, CC Docket No. 92-237, Notice of Proposed Rule Making (adopted March 30, 1994 and released April 4, 1994).

recommended change is from a "10XXX" code totalling five digits to one of seven digits, in a "101XXXX" format. Id. ¶ 48.

The Commission has decided that implementation of the CICs expansion should move forward; however, it also recognized that the proposed change will present difficulties since new equipment will be necessary to implement the expanded codes. Id. at ¶¶ 53-54. The FCC has not yet issued a decision on the length of a transition period during which subscribers can use either 3 or 4 digit CICs. It has sought comment on a transition period of six years, stating that a lengthy transition will significantly reduce the hardships imposed on various users. Id.

AMTA has already outlined the heavy costs to CMRS providers, especially traditional SMR operators, in meeting any equal access obligations. These hardships would be significantly increased if newly-installed equipment must be upgraded within its normal lifespan to meet new regulatory requirements. AMTA therefore requests that the Commission delay any implementation of mandated equal access obligations until the end of the transition period to expanded FGD CICs.

IV. INTERCONNECTION

A. The Commission Should Provide Oversight of Interconnection Rates and Terms.

The Commission seeks comment as to whether the current system of good faith negotiations should be retained or, alternatively, whether tariff requirements should be imposed on LECs interconnection. Both methods have their advantages and disadvantages, particularly for new entrants into the marketplace. AMTA suggests that

the benefits of both might be attained if the Commission would monitor interconnection rates and terms by requiring that the contracts between LEC and CMRS providers be filed with the Commission.

A tariff requirement would establish clearly the rates which others were being charged. Licensees with relatively limited power to negotiate would have some assurance that the rates they are paying are consistent with those charged to persons providing similar services. However, tariffs also are rigid; they offer insufficient flexibility in a marketplace characterized by rapid change and intensive competition.

Good faith negotiations, on the other hand, also have certain disadvantages. A new entrant may have insufficient power to negotiate successfully with the LEC. For example, those implementing ESMR systems may require interconnection service in a short time frame in order to deploy the system. A "take it or leave it" attitude of an LEC may result in the ESMR operator having to accept undesirable terms because it cannot afford to delay the provision of service while it files and the FCC considers a complaint, or "hold out" for better rates. It is also more difficult to determine whether the proposed rates are competitive with other CMRS providers under negotiated arrangements. Nonetheless, AMTA is persuaded, on balance, that good faith negotiations may provide more flexibility for CMRS providers to obtain optimal interconnection arrangements.

Therefore, AMTA concludes that the Commission should not mandate tariff filings for LEC interconnection with CMRS, at least initially. Instead, the current system of good faith negotiations should be continued, but the executed contracts should

be filed with the Commission. The Commission could then retain oversight of the area and assume an ombudsman role to ensure equitable treatment among CMRS providers.

B. The NOI into CMRS-to-CMRS Interconnection Is Premature.

AMTA submits that the inquiry into whether the Commission should require CMRS providers to provide interstate interconnection to other CMRS providers is premature. Mandating an obligation to provide CMRS to CMRS interconnection may result in the more mature CMRS providers using this obligation to disadvantage the new entrant's initiation of service. Further, the interconnection requirement is intended to ensure that consumers have access to the Public Switched Telephone Network. All CMRS systems, by definition, are interconnected with the PSTN in one form or another, obviating any need to mandate such access. AMTA, for these reasons, recommends that the Commission defer any further consideration of this issue until the CMRS industry has developed sufficiently to create a valid record on which to proceed.

C. CMRS Resale Obligations Are Unnecessary.

In the 2nd R&O, the Commission noted that it would explore in a subsequent proceeding the issue of whether to impose resale obligations on CMRS providers. 2nd R&O ¶ 238. The Notice seeks comment on whether some or all CMRS providers should be required to resell service to facilities-based or non-facilities-based CMRS competitors. NOI ¶ 123.

AMTA submits that mandatory resale obligations for CMRS providers are unnecessary. The Commission historically has required resale of cellular service to encourage competition; however, it has relaxed mandatory resale obligations in recent

years.^{15/} By contrast, the CMRS industry is already characterized by an increasingly broad variety of service offerings and the likelihood of vigorous competition among various service providers. Therefore, the worthwhile public policy goal of encouraging competition will be otherwise satisfied in the CMRS marketplace through direct licensing. Should the expected level of competition among CMRS providers fail to materialize, it may then be appropriate for the Commission to address the issue of mandatory resale obligations.

V. CONCLUSION

For the reasons described above, AMTA urges the Commission to proceed expeditiously to complete this proceeding, consistent with the recommendations detailed herein.

^{15/} See Petitions for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies, CC Docket No. 91-33, Report and Order, 7 FCC Rcd 4006 (1992).

CERTIFICATE OF SERVICE

I, Cheri Skewis, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 12th day of September, 1994, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing Comments to the following:


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